United Nations A/CN.4/L.567

General Assembly

Distr.: Limited
12 August 1998

Original: English

International Law Commission
Fiftieth session
Geneva, 20 April-12 June 1998
New York, 27 July-14 August 1998

Draft report

Rapporteur: Mr. Christopher John Robert **Dugard**

Chapter X
Other decisions and conclusions of the Commission

A. Programme, procedures and working methods of the Commission and its documentation

1. Planning of the work of the current session

1. The plan was that at the beginning of the session, a two-day seminar would be held to commemorate the fiftieth anniversary of the Commission. The first part of the session in Geneva should then be devoted to the discussion of the reports submitted by the Special Rapporteur with respect to the topics on the agenda of the Commission, whereas the second part of the session in New York should be used for the adoption of draft articles (with regard to reservations, State responsibility and international liability) and of the report of the Commission.

2. Work programme of the Commission for the remainder of the quinquennium

2. The Commission affirmed that the work programme for the remainder of the quinquennium set out by the Commission in its report on the work of its forty-ninth session[1] should be complied with to the extent possible.

[1] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 10* (A/52/10), paras. 220 and 221.

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3. Making available Special Rapporteur's reports prior to the session of the Commission

3. Reference was made to the recommendation contained in the report of the Commission at its forty-eighth session[2] that it would be "highly desirable that all reports should be available to Commission members some weeks before the commencement of the session, to enable study and reflection." Taking into account the time required for the editing, translation, reproduction and distribution of documents (normally six weeks prior to the session), the Commission decided that Special Rapporteurs should submit their reports to the Secretariat in time so as to ensure their prompt availability in all languages before the beginning of the session. In this connection, the Commission further decided that, in future cases, candidates for Special Rapporteur should be reminded of the demands that would be made in terms of time and effort upon their appointment.

4. The Commission stressed the advisability that the Secretariat be requested to send to all members of the Commission a copy of the letter sent to Special Rapporteurs reminding them of the deadline set for the submission of their reports. The Commission also requested the Secretariat to distribute to all members, upon receipt of the report and after its editing, the Special Rapporteur's report in the language submitted.

4. Organization of the fifty-first session

5. With reference to the suggestion contained in paragraph 224 of its report on the forty-ninth session, which stated that to enhance efficient organization of the work, the membership for the following session of the Bureau, or at least, the Chairman and the Chairman of the Drafting Committee, should be agreed upon at the end of a session rather than at the beginning of a session as had been the case,[3] the Planning Group took note that the Eastern European Group would nominate the chairmanship of the Commission and the Latin American Group would nominate the chairmanship of the Drafting Committee. Members were urged to consult so as to complete the nomination process.

B. Commemoration of the fiftieth anniversary of the Commission

6. Pursuant to a decision of the Commission at its forty-ninth session,[4] a seminar was held at Geneva on 21 and 22 April to commemorate the fiftieth anniversary of the Commission. The theme of the seminar was the critical evaluation of the Commission's work and lessons learned for its future, which was discussed by five panels focusing upon the following topics: (a) overview of the work of the International Law Commission 1948–1998: international responsibility and liability – comments on the Commission's approach; (b) State immunities: current problems inherited from the past?; (c) law of treaties: questions remain open; (d) future topics; (e) problems of the international legislative process and uses and perils of codification. Members of the academic community, diplomats and legal advisers of Governments and international organizations were invited to participate in the discussion.

7. The proceedings of the seminar will be published and disseminated to interested institutions for the purpose of wider appreciation of international law.

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[2] Ibid., *Fifty-first Session, Supplement No. 10* (A/51/10), para. 191.

[3] Ibid., *Fifty-second Session, Supplement No. 10* (A/52/10), para. 224.

[4] Ibid., para. 229. The General Assembly welcomed this decision in paragraph 19 of its resolution 52/156.

8. *Making Better International Law: The International Law Commission at 50* was published in June 1998 to commemorate the fiftieth anniversary of the establishment of the Commission. It contained the proceedings of the Colloquium on the Progressive Development and Codification of International Law held on 28 and 29 October 1997. The Secretary-General provided the preface to the publication, which was divided into three parts: Part I, oral presentations of papers and open-floor discussion, organized according to the following themes: (a) overview of the international law-making process and the role of the International Law Commission; (b) major complexities encountered in contemporary international law-making; (c) selection of topics for codification and progressive development by the Commission and its working methods; (d) the Commission's work and the shaping of international law; enhancing the Commission's relationship with other law-making bodies and relevant academic and professional institutions; (e) making international law more relevant and readily available; (f) the influence of the International Court of Justice on the work of the International Law Commission and the influence of the Commission on the work of the Court. Part II contained the written submissions of papers received. Part III reproduced the decisions and conclusions of the Commission on its programme, procedures and working methods adopted at its forty-eighth session and the statute of the International Law Commission in both English and French.

9. The *Analytical Guide to the Work of the International Law Commission, 1949–1997* was published in July 1998 as a contribution by the Codification Division to commemorate the fiftieth anniversary of the Commission, and complements the publication, *The Work of the International Law Commission*, currently in its fifth edition. The Guide is intended as a tool to facilitate research into the Commission's contribution to the codification and progressive development of international law during its first 50 years of existence. The Guide is organized by topics, subdivided into categories and stages of consideration within the Commission, allowing the reader to trace the development of each topic from inception to conclusion.

10. The International Law Commission Web site was created by the Codification Division, to commemorate the fiftieth anniversary of the Commission. The primary purpose of the Web site is to disseminate information regarding the activities of the Commission to as wide an audience as possible, through the electronic medium. As more of the documents and reports of the Commission are transformed into an electronic format and posted on the Internet, the Web site will also serve as a supplement to the published hard-copy versions of those documents and reports. It includes the following: information on the fiftieth session of the Commission: an introduction to the Commission, including a brief historical synopsis; information regarding the composition and membership of the Commission, and its activities during its forty-eighth, forty-ninth and fiftieth sessions; a discussion of its programme of work; online copies of the reports of the Commission, as well as of various texts adopted by the Commission, or based on its work; and an online version of the *Analytical Guide to the Work of the International Law Commission, 1949–1997*. This Web site will be maintained by the Division.

C. Long-term programme of work

11. The Planning Group took note of the report of the Working Group (ILC(L)/WG/LTPW/CRP.1/Rev.1) and the Group's recommendation to continue its work at the next session (the report of the Working Group is contained in annex ___ to the present report).

D. Representation of the Commission at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

12. Having regard to the draft statute for an international criminal court, prepared by the Commission and submitted to the General Assembly at its forty-ninth session,[5] the Commission decided to designate Mr. James Crawford to represent the Commission at the Conference. Mr. Crawford addressed the Conference on 16 June 1998 and reported to the Commission on 27 July 1998.

13. On 27 July 1998, the Secretary of the Commission, who was the Executive Secretary of the Conference, transmitted the text of the following resolution adopted by the Conference in this regard:

> "*The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court*
>
> "*Resolves* to express its deep gratitude to the International Law Commission for its outstanding contribution in the preparation of the original draft of the Statute, which constituted the basis for the work of the Preparatory Committee."

E. Cooperation with other bodies

14. At the 2537th meeting of the Commission, on 28 May 1998, Mr. Tang Chengyan, Secretary-General of the Asian-African Legal Consultative Committee (AALCC), expressed the Committee's continued interest in the topics currently on the ILC's agenda. As regards State responsibility, he informed the Commission that the law relating to countermeasures had been discussed in a seminar organized by AALCC in Tehran in January 1998 on "International extraterritorial application of national legislation: sanctions imposed against third parties". On reservations to treaties, a special meeting had been organized in the course of the thirty-seventh session of AALCC held at New Delhi. Other topics on the agenda of the Commission discussed by AALCC included: prevention of transboundary damage from hazardous activities; nationality in relation to the succession of States; and unilateral acts of States. At the same session, AALCC had also considered such other topics as the establishment of an international criminal court and the law of international rivers and the framework convention on the non-navigational uses of international watercourses. AALCC would continue to maintain a close working relationship with the Commission.

15. At the 2554th meeting of the Commission, on 3 August 1998, Mr. Jonathan T. Fried, observer for the Inter-American Juridical Committee (IAJC), informed the Commission of current activities of the Committee. IAJC had recently been involved in studies concerning the legal dimension of integration and international trade, in particular the most-favoured-nation clause as well as the right to information, including access to information and the protection of personal data. Furthermore, the Committee prepared a draft convention against corruption, which was later adopted by the Organization of American States (OAS), and was developing model laws regarding illicit enrichment and transnational bribery. Other topics with which the IAJC had been recently involved include enhancing the administration of justice in the Americas, inter-American cooperation against terrorism, the application of the United Nations Convention on the Law of the Sea by States of the hemisphere, a draft

[5] Ibid., *Forty-ninth Session, Supplement No. 10* (A/49/10), para. 91.

declaration on the rights of indigenous peoples as well as democracy in the inter-American system.

16. At the 2558th meeting, on 7 August 1998, Mr. Rafael A. Benitez, observer, informed the Commission of the work and activities of the Ad Hoc Committee of Legal Advisors on Public International Law (CAHDI) of the Council of Europe. The Committee had established a working group of specialists on reservations to treaties which met in Paris in February 1998 and was to meet again in September 1998. Among the questions tackled or to be tackled by the group are the admissibility of reservations, the role of treaty bodies, the effects of illicit reservations and the practice of the members of the Council of Europe concerning reservations to treaties. The group would bear specially in mind the work being carried out by the Commission in this area. On the question of State practice relating to State succession and issues of recognition, CAHDI decided in March 1998 to prepare a report, in cooperation with some other institutions, aimed at analysing the practice of States members of the Council of Europe.

17. At the 2538th meeting, on 10 June 1998, Judge Stephen Schwebel, President of the International Court of Justice, gave the Commission an analytical account of the cases currently before the Court. He pointed out that the expanded caseload had inevitably led to increasingly lengthy delays in hearing cases. On average, States could now expect to wait about four years between initial filing and final judgement. Such delays had understandably given rise to a certain restiveness both inside and outside the Court. The basic problem was that the resources at the Court's disposal had not increased in line with the demand for its services and had even in recent years been cut. Consequently, the size of the translation services and archives department was not adequate, the Judges at the Court did not have clerks, nor was there a corps in the Registry designed to assist them individually and the number of legal staff was very small. The Court, for its part, had taken a number of steps to expedite its procedures. States were being encouraged, for example, to submit their pleadings consecutively rather than simultaneously and to curb the proliferation of annexes to pleadings which tended to absorb a disproportionate amount of translation time. Regarding the Court's making use of draft articles produced by the International Law Commission, the President pointed out that, over the years, the Court had habitually attached considerable importance to the conventions elaborated by the Commission. Although draft articles were only drafts and therefore could not be accorded the same weight, in cases where the parties to a dispute agreed that certain draft articles were an authoritative statement of the law on a particular point, the Court gave relevant weight to them.

18. On 9 June 1998, an informal working session was held between members of the Commission and of the legal services of the International Committee of the Red Cross (ICRC) and of the International Federation of Red Cross and Red Crescent Societies, to discuss common interests of these bodies.

F. Date and place of the fifty-first session and of the subsequent sessions

19. The Commission agreed that its next session would be held at the United Nations Office at Geneva from 3 May to 23 July 1999 (12 weeks). Taking into account the Commission's expected volume of work in sessions subsequent to 1999 and the need to organize its work in the most productive manner, the Commission also agreed that, barring unforeseen circumstances, sessions subsequent to 1999 should be scheduled to take place in two rather evenly split parts, with a reasonable period in between, for a total of 12 weeks, in Geneva. Accordingly, the Secretariat was requested to undertake the necessary administrative and budgetary requests in the light of that decision. In this connection, the

Secretary of the Commission made a statement regarding the possible requirement of expenditure.

20. The Commission, on the recommendation of the Planning Group, decided to hold its session in 2000 at Geneva from 24 April to 2 June and from 3 July to 11 August 2000.

G. Representation at the fifty-third session of the General Assembly

21. The Commission decided that it should be represented at the fifty-third session of the General Assembly by its Chairman, Mr. Joao Clemente Baena Soares.

H. International Law Seminar

22. Pursuant to General Assembly resolution 52/156, the thirty-fourth session of the International Law Seminar was held at the Palais des Nations from 11 to 29 May 1998. The Seminar is for advanced students specializing in international law and for young professors or government officials intended for an academic or diplomatic career or posts in the civil service in their country.

23. Twenty-three participants of different nationalities, mostly from developing countries, were able to take part in the session.[6] The participants in the Seminar observed plenary meetings of the Commission, attended specially arranged lectures and participated in working groups on specific topics.

24. The Seminar was opened by the Chairman of the Commission, Mr. Joao C. Baena Soares.

25. The following lectures were given by members of the Commission: Mr. Pemmaraju S. Rao: "The work of the ILC"; Mr. Zdzislaw Galicki: "Nationality as a human right"; Mr. Mohamed Bennouna: "Diplomatic protection"; Mr. James Crawford: "State responsibility"; Mr. Teodor Melescanu: "Economic sanctions".

26. Lectures were also given by Mr. Vladimir Petrovsky, Secretary-General of the Conference on Disarmament and Director-General of the United Nations Office at Geneva (UNOG): "Multilateral disarmament"; Mr. Roy S. Lee, Director, Codification Division, Office of Legal Affairs and Secretary to the International Law Commission: "The establishment of the International Criminal Court: Legal problems"; Mr. Michel Moussalli, Former Director, Office of the United Nations High Commissioner for Refugees: "The international protection of refugees"; Mr. Stéphane Jeannet, Legal Adviser, International Committee of the Red Cross: "International humanitarian law and the work of the ICRC";

[6] The following persons participated in the thirty-fourth session of the International Law Seminar: Ms. Irene Abessolo (Gabon); Mr. Agalar Atamoglanov (Azerbaijan); Mr. Yen The Banh (Viet Nam); Mr. Kesab Prasad Bastola (Nepal); Mr. Gela Bezhuashvili (Georgia); Mr. Mohamed Bouqentar (Morocco); Ms. Irena Cacic (Croatia); Ms. Mélanne Civic (United States of America); Mr. Juan Norberto Colorado Correa (Colombia); Ms. Patricia Galvao Teles (Portugal); Mr. Zafar Iqbal Gondal (Pakistan); Mr. Fernando Herera Rodriguez (Mexico); Mr. Kumbirai Hodzi (Zimbabwe); Ms. Alba Ibrahimi (Albania); Mr. Ali Reza Jahangiri (Islamic Republic of Iran); Mr. Gilberto Marcos A. Rodrigues (Brazil); Mr. Alejandro Moreno Diaz (Venezuela); Ms. Dewi Naidu (Denmark); Mr. Samuel Nerquaye-Tetteh (Ghana); Mr. Giovanni Palec (Philippines); Ms. Suranjika Tittawella (Sri Lanka); Ms. Jeannette Tramhel (Canada); Mr. Mncedisi Xego (South Africa). One additional selected candidate (from Zambia) did not attend. A Selection Committee, under the chairmanship of Professor Nguyen-Huu Tru (Honorary Professor, Graduate Institute of International Relations, Geneva), met on 11 March 1998 and selected 24 candidates out of 75 applications for participation in the Seminar.

Mr. Mojtaba Kazazi, Chief Governing Council Secretariat, United Nations Compensation Commission: "Security Council action: The work of United Nations Compensation Commission".

27. Seminar participants were assigned to one of four working groups for studying particular topics under the guidance of Commission members, as follows: "Reservations to treaties in domestic law" (Mr. Pellet); "Unilateral acts" (Mr. Candioti); "Diplomatic protection" (Mr. Hafner); and "State responsibility" (Mr. Dugard). Each group presented its findings to the Seminar; two groups presented papers, on "Unilateral acts of States" and on "Diplomatic protection", which were also shared with members of the Commission.

28. Participants were also given the opportunity to make use of the facilities of the United Nations Library and of the UNHCR Visitors' Centre, and to visit the museum of the ICRC.

29. The Republic and Canton of Geneva offered its traditional hospitality to the participants after a guided visit of the Alabama and Grand Council rooms.

30. Mr. Joao C. Baena Soares, Chairman of the Commission, Mr. Ulrich von Blumenthal, on behalf of the United Nations Office at Geneva, and Ms. Patricia Galvao Teles, on behalf of the participants, addressed the Commission and the participants at the close of the Seminar. Each participant was presented with a certificate of attendance.

31. The Commission noted with particular appreciation that the Governments of Denmark, Finland, Germany, Hungary, Ireland, Switzerland and Venezuela had made voluntary contributions to the United Nations Trust Fund for the International Law Seminar. Thanks to those contributions, it was possible to award a sufficient number of fellowships to achieve adequate geographical distribution of participants and to bring from developing countries deserving candidates who would otherwise have been prevented from taking part in the session. In 1998, full fellowships (travel and subsistence allowance) were awarded to 15 candidates and partial fellowship (subsistence only) to 4 candidates.

32. Of the 760 participants, representing 144 nationalities, who have taken part in the Seminar since 1965, the year of its inception, 426 have received a fellowship.

33. The Commission stresses the importance it attaches to the sessions of the Seminar, which enables young lawyers, especially those from developing countries, to familiarize themselves with the work of the Commission and the activities of the many international organizations which have their headquarters in Geneva. The Commission recommends that the General Assembly should again appeal to States to make voluntary contributions in order to secure the holding of the Seminar in 1999 with as broad a participation as possible.

34. The Commission noted with satisfaction that in 1998 comprehensive interpretation services were made available to the Seminar. It expresses the hope that the same services will be provided for the Seminar at the next session, despite existing financial constraints.

I. Gilberto Amado Memorial Lecture

35. The fourteenth Memorial Lecture, in honour of Gilberto Amado, the illustrious Brazilian jurist and former member of the Commission, was given on 13 May 1998 by Ambassador Ramiro Saraiva Guerreiro, former Minister of External Relations of Brazil, on the subject "The creation of the International Law Commission and some considerations on supposed new sources of international law".

36. The Gilberto Amado Memorial Lectures have been made possible through the generous contributions of the Government of Brazil, to which the Commission expressed its gratitude. It requested the Chairman to convey its gratitude to the Government of Brazil.